UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION SIX

In the Matter of:

UNIFIRST CORPORATION,

Employer

and

HOMER J. SUMAN — Case No. 06-RD-172983

Petitioner

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS, INTERNATIONAL UNION, AFL-CIO, CLC, LOCAL 1324-15

Union

EMPLOYER'S STATEMENT IN OPPOSITION TO UNION'S REQUEST FOR REVIEW

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Pursuant to Sections 102.67 and 102.69 of the Rules and Regulations of the National Labor Relations Board, the Employer, through counsel, files this Statement in Opposition to the Union's Request for Review.

I. **Background**

The Union originally raised twenty-one timely filed Objections following the decertification election held on April 28, 2016 (the "Election,") in which 75 employees voted against continuing union representation, 51 workers voted in favor of continuing representation, and five ballots were challenged.[1] Objections 14 through 20 were rejected as unmeritorious during the course of the Region's initial investigation.

A concurrent unfair labor practice charge was filed by the Union against the Employer in Case No. 06-CA-175641 making parallel allegations. This Charge was dismissed by the Regional Director by letter dated July 29, 2016. An Appeal of the Regional Director's Dismissal was made to the General Counsel which was denied by letter dated August 31, 2016.

Another Charge, Case No 06-CA-184421, was filed by the Union against the Employer asserting new election-related allegations on September 15, 2016. This Charge was dismissed by the Regional Director by letter dated November 8, 2016. An Appeal of the Regional Director's Dismissal was made to the General Counsel which was denied by letter dated November 30, 2016

[1] See Tally of Ballots. (Government Exhibit 1-.)

A Hearing was ordered to be held on the surviving Objections of the Union in Case No. 06-RD-172983 on December 8, 2016. At the conclusion of said hearing, Objections 5, 6, 12, 13, and 21 were withdrawn by the Union based on a lack of evidence. The Hearing Officer issued a Report on December 28, 2016 recommending Dismissal of all remaining Objections

The Union filed Exceptions to the Hearing Officer's Report on January 11, 2017. In the Union's Exceptions to the Hearing Officer's Report, Objections 2, 3, 4 and 11 were withdrawn. Objections 7 and 8 were combined into one (Exception #2). The Regional Director issued her Supplemental Decision and Certification Of Results of Election on January 20, 2017, rejecting the Union's four Exceptions and ordering that the election results be certified.

The Union filed a timely Request for Review of the Regional Director's Supplemental Decision on February 3, 2017. The Employer opposes the Union's Request.

II. **Preliminary Procedural Issue: The Basis For Requesting A Review**

The provisions of §102.69 c(1)(i) of the Board's Rules and Regulations govern a party's Request for Review of a Regional Director's post election decision, referencing §102.67 as the applicable source of authority for analyzing the validity of such Request. Specifically, §102.67(d) states the following:

> (d) Grounds for review. The Board will grant a request for review only where compelling reasons exist therefor. Accordingly, a request for review may be granted only upon one or more of the following grounds:
>
> (1) That a substantial question of law or policy is raised because of: (i) The absence of; or (ii) A departure from, officially reported Board precedent.

(2) That the regional director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.

(3) That the conduct of any hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.

(4) That there are compelling reasons for reconsideration of an important Board rule or policy.

In its Request for Review, the Union has not made any assertions associated with grounds 1, 3, or 4. The only contention of the Union in its Request for Review arguably falling within the above-listed grounds is that the Regional Director "neglected to consider important facts in the record." (Union Request for Review, p.2). Seemingly this would come under Ground #2; however, the failure of the Union to articulate this issue within the rubric of the Board's Rules & Regulations should not go uncommented upon.

First, there is no issue or argument or challenge raised anywhere in the Union's Request for Review which could be characterized as "compelling." The Hearing Officer's credibility rulings were not challenged. The Hearing Officer's legal support was not found wanting. The Regional Director's Decision was not labeled arbitrary or capricious. The Union did not say that any of the Regional Director's findings or conclusions were a departure from Board policy or precedent. Rather, the Union is complaining that the Regional Director chose to disregard certain "facts" the Union was hoping the Regional Director would train on to influence her decision. This does not rise to the level of a "compelling" reason in the absence of greater context as to why the Regional Director erred. The Union's bare complaint about the "neglect" of the Regional Director for not crediting certain facts of the Union's witnesses does not constitute "clearly erroneous" decision-making.

Second, in her decision, the Regional Director's relied upon the Hearing Officer's credibility findings. Such reliance is normal protocol, well supported by Board rulings,[2] and for good reason. The Hearing Officer, who is specifically tasked with the obligation to make credibility determinations,[3] is in the best position to gauge who was a credible witness and who was not. In this respect, the Regional Director acted in a manner entirely consistent with her reviewing role. While a Regional Director must objectively evaluate the validity of the findings and recommendations in the Hearing Officer's Report, the Board endorses giving presumptive credit to a Hearing Officer's credibility findings.[4] It was not "clearly erroneous" for the Regional Director to do so.

Third, given the silence of the Union relative to the Hearing Officer's discussion about the credibility of witnesses, for the Board to evaluate credibility findings not specifically excepted to by the Union in its Request for Review would be akin to examining an non-asserted exception, *sua sponte,* by the Board. Where no specific exception is raised by a party on a given subject, the Board's longstanding practice is for reviewing authorities such as the Regional Director to adopt the ruling of a Hearing Officer on that specific issue on a *pro forma* basis. Therefore, the credibility rulings of the Hearing Officer, being unchallenged in toto by the Union, should have been and were accepted by the Regional Director consistent with well established Board precedent.

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[2] See FedEx Freight, Inc. 362 NLRB No. 43 (2015) Fn 1

[3] See §11424.3(b) of Part 2 of the NLRB's Casehandling Manual.

[4] In *UniFirst Corporation* 361 NLRB No. 1 (2014) Fn 1: "The Employer excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. Stretch-Tex Co., 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings."

The Union's Request for Review falls shy of the criteria set forth in §102.67(d) and therefore said Request should be rejected.

III. Facts

A. The Union's "Facts" Do Not Come From Reliable Testimony

A review of the three speech-related Exceptions raised in the Union's Request For Review demonstrates that the witnesses relied upon by the Union in its Request For Review were not given credence by the Hearing Officer for good reason.

1. Put Your Dues Money In The Employer's 401(k) Plan

With respect its first Exception, the Union repeatedly cites the testimony of Union witness Kelly Brenner when discussing the claim that employees were advised by the Employer's attorney at a pre-election meeting "…put your dues into the Company's 401k." But according to the Hearing Officer, Kelly Brenner was not a credible witness on this subject:

> "Union witness Brenner in particular contradicted herself on this issue. She initially testified that an unidentified member of management answered a question about the 401(k) and later confessed that the individual making the statement could have been Kraft, another management official, or an employee." (Hearing Officer's Report @ p.5)

The Union in its Request also relies upon the testimony of Union Officer Toni DiGiacobbe and co-worker Mary Ann Trozzo. The Hearing Officer discounted the testimony of Toni DiGiacobbe:

> "DiGiacobbe gave conflicting testimony, first testifying that Kraft said that employees could put their dues into a 401(k) plan and then on cross examination conceding that there was no discussion of benefits at this meeting." (Hearing Officer's Report @ p.5)

As for Mary Anne Trozzo, the Hearing Officer said that her testimony was not credible:

"Trozzo was adamant that Kraft said that employees could put their dues monies into a 401(k) plan… Trozzo's contention is belied by the fact that she could provide no context to statements attributed to Kraft." (Hearing Officer's Report @ p. 5)

At the meeting in early April, 2016 attended by Trozzo, Digiacobbe, Bergman, and Brenner, which is the basis for all three speech Exceptions, Kraft's description of what was said, fully credited by the Hearing Officer, is as follows (Tr. @ pp 192-194):

Q: Turning your attention to the first round of meetings, did you speak to employees during those meetings?

A: I was the primary speaker.

Q: And describe your presentation.

A: The RD petition was filed right at the last day of March 2016. The first week of April was spent working on a stipulation agreement, which I think became approved, and meetings were held with workers once we actually knew when the date of the election was going to be, where it was going to be, and what the voting times were going to be. That triggered those meetings, the first round meetings with—large group meetings with management were mandatory.

My recollection is they lasted 15, 20 minutes, half an hour tops, but it was to say a petition has been filed. This is how the voting process works. There's going to be an election in this room April 28th. There's two large chunks of voting time, and there will be a representative from the NLRB here. There will be employee observers. You will go up to a desk. You will tell them your name. They'll check you off a voter eligibility list.

Everybody who's been here since—I think the payroll period eligibility date was, like, March 25th, but I knew it back at the time. I said you go into a secret ballot box. You'll check your choice, yes or no, depending on whether you want to keep the Union or not, and you'll fold it. You'll put it into a ballot box, and then after the vote, they'll count them.

I reminded everyone this is not the Employer's election. It's not the Union's election. It's the employees' election. I said that we didn't--- I said I personally liked the Union representatives. I said it's not about what kind of guys they are. I said the USW I'm sure does a lot of fine things for workers in other places. The question has to do with whether people here want to keep them here. That's entirely up to you.

The company considers itself to be a resource. We will be in a position of responding to questions. We're not going to answer any now because I want to make sure that when we respond to people, we respond to people simultaneously. We also want to make sure our answers are legal.

And I cautioned them about rumors. I said you're going to hear potentially misinformation. I encourage you track down from any source and make sure what you hear is accurate.

Let me think. That pretty much is – it was the whole thing. I then — I asked at the end of my presentation, I said, does -- if anybody has any questions, I'll try to field them now. I also said we are not -- I am not going to talk about the pros and cons of whether this is a good or a bad idea now. I'm going to be pushing that off to another meeting.

I also I believe commented, I understand this is not the first election people have had here. The next round of meetings will be voluntary, so you don't have to come if you don't want to. I think I – there were some – there was a number of people that were relieved about that, so that was it."

Kraft's remarks do not reflect any kind of "union-baiting" or trash talk or electioneering. There was no lobbying. It was an informational meeting. There would have been no reason for Kraft to stray from his purpose at the meeting and make the objectionable remarks testified to by the various Union witnesses.

The Union myopically argues that the objectionable comment supposedly made by Kraft linking union dues with 401k contributions is patterned behavior on the part of the Employer—a repeat of a statement made by UniFirst management specifically found by the Board to be objectionable in *UniFirst Corporation* 300 NLRB 1 (2014). The Union's theory is seriously misguided. There would be no good reason for the Employer's Attorney to recklessly blurt out a remark at a meeting attended by local Union officials which he knew, as legal counsel for the Employer in *UniFirst Corporation*, supra, would compromise the results of an election. Kraft credibly testified that at the meetings held on April 8th-10th, he was just telling all the workers there was going to be a vote, providing details of the same. He said there would be follow up employee meetings, with employee attendance being voluntary, to discuss election-related issues. The contention of the Union about history repeating itself is foolish.

Finally, Karen Bergman, the Unit Chairperson (the highest ranking Union official of the Local) who was at the same meeting attended by Brenner, Trozzo, and DiGiacobbe, testified without equivocation that the Employer's Attorney said he would not talk about benefits at this meeting, including the 401k. (Tr. @ p 74.) Bergman flatly contradicted the testimony of the other Union witnesses. Combined with the testimony of Kraft denying anything was said about union dues and the 401k, the Hearing Officer's rejection of Exception #1 was clearly well founded.

2. Nothing Will Change For The Worse/The Disciplinary Policy Will Remain the Same

In its Second Exception, the Union claims the Hearing Officer erred by not finding that, at the April 8, 2016 meeting attended by Bergman, Trozzo, and DiGiacobbe, the Employer's Attorney impliedly promised workers "nothing would change for the worse," and more specifically, that "the disciplinary policy would remain the same." The Hearing Officer once again summarily rejected the testimony of Trozzo and DiGiacobbe since both were unable to provide any context about such alleged statements (Hearing Officer's Report @ p. 7)

Bergman's initial testimony on this subject mirrors the testimony of Trozzo and DiGiacobbe. However, on cross-examination Bergman provided context for the alleged objectionable remarks, admitting that Kraft was responding to a very specific concern about a Stock Room employee being warned for not meeting production quotas. Bergman admitted that Kraft did not say "nothing will change for the worse," or that "the disciplinary policy would remain the same." Bergman confirmed that Kraft simply stated that non-union employees are subject to productivity quotas as well. (Tr. @ pp 80-83) As Ms. Bergman admitted, and as Kraft credibly

testified, nothing was said by Kraft about the disciplinary policies generally, nor was there any kind of broadly stated promise that "nothing would change for the worse."

Why Kraft's remarks about productivity quotas might be regarded as objectionable defies explanation. Production quotas are not looked upon with favor by bargaining unit employees—if the Employer's production employees do not work at an acceptable pace they are subject to discipline. Nothing comparative was said by Kraft about Union productivity quotas being tougher than non-Union productivity quotas. After listening to a Union-represented employee express concern about a slow co-worker running into problems with the Employer's productivity quotas, Kraft simply said that non-Union employees are also subject to production quotas. Logically speaking, this would be a reason to retain rather than reject continued Union representation. Such a statement cannot be viewed as objectionable.

3. The Employer can change any language in the Contract whenever it wants

In its third Exception, the Union's allegation about the Employer's Counsel declaring that he "…could change any language in the contract at any time" is a genuinely oddball statement. Making such a declaration is even stranger if it cannot be put in context. Which is why the testimony of both Trozzo and DiGiacobbe on this subject was rejected by the Hearing Officer (Hearing Officer's Report @ p. 8): "the testimonies of Kraft and Bergman both provide context lacking in the other witnesses' testimony." After claiming that Kraft said this, neither Trozzo nor DiGiacobbe could elaborate on why, when, or in what context the alleged remark was made.

Again, following what appears to be a contrived script used by all of the Union witnesses, Bergman initially testified in a manner consistent with the Trozzo and DiGiacobbe. However, on

cross examination Bergman clarified her remarks, stating that Kraft was responding to a statement she made at the meeting "… that the Handbook is not a contract and that the Union contract is a guarantee" (Tr. @ p. 75.) Bergman admitted that Kraft agreed with her, stating to the assembled workers that "the Handbook is not guaranteed." Bergman further admitted that Kraft went on to say that the labor contract is not guaranteed in all of its articles either. Bergman admitted that Kraft illustrated this point by mentioning the group health care provisions of Article 6. (Tr. @ pp 78-79.) During cross examination, Bergman acknowledged that there are several other places in the labor contract supporting the truth of Kraft's comment, specifically Article 13 ("No employee's hours or schedule are guaranteed…"); Article 4, § ("…the Company's corporate-wide Attendance Policy…which shall be unilaterally modifiable at any time"); and Article 22 ("The Company is free to establish, and from time to time modify, minimum quotas for sales-related activities…) (Tr. @ pp. 76-78.)

It is hard to imagine why the Employer's Attorney would make such an abrasive, pompous, factually inaccurate, sketchy comment about the Employer having the discretion to change any and all contract language whenever the Employer wanted to. Whether at a meeting with employees to talk about a decertification election or at any other time. There is simply no logical explanation supporting why this might get said.

The Employer believes the Union witnesses' exaggerated, skewed interpretations relating to Exception #3 is driven by the evident bias of Local Union officials in favor of keeping Union representation. It is reasonable to speculate that, consistent with their testimony about the other speech-related objections, the Union's witnesses were schooled to state the objectionable messages and nothing else. The Union's approach was exposed when follow up questions were asked of the

them seeking explanation of the circumstances behind the alleged objectionable statements. They were unable to do so.

With respect to the speech-related Exceptions, the Hearing Officer's findings, following a logical and credible portrayal of the facts, should not be overturned based on selective soundbite plucking in the Union's Request for Review which repeatedly ignores the fundamental problem with the testimony of the Union witnesses. They testified with a repeated chorus of "I don't know" or "I don't recall" when asked to explain how or why the statements were made. The only Union witness to provide context—Karen Bergman—clarified her testimony in a way that it was in sync with the testimony of Kraft.

B. The Employee Bulletin Boards

With respect to Exception 4, the testimony of all witnesses was basically in agreement concerning the two Employee Bulletin Boards created on April 18, 2016, ten days prior to the April 28th, 2016 decertification election in Case No 06-RD-172983. The Employee's Attorney provided unrefuted testimony explaining why the two bulletin boards were created-- in response to petty rule violations by both sides.

On Monday, April 18, 2016 the anti-Union group attempted to improperly post anti-Union election messages throughout the facility. This was something clearly not allowed by the Employer, and all of the "renegade" anti-Union postings were taken down immediately. About twenty minutes after the postings were removed, an employee reported to the Kraft that a pro-Union supporter hindered the proper dissemination of anti-Union flyers in the Employer's cafeteria by throwing out flyers by the stack. Kraft elected not to advise the Employer's

management to discipline the employee seen doing this. Instead, Kraft testified that he tried to come up with a solution which would avoid the need to invoke discipline against overly zealous employee advocates for both sides. And so he created two Employee Bulletin Boards and let everyone post whatever they wanted.

All witnesses testified that the two new Employee Bulletin Boards were established in a facially neutral way, with the local Union leadership informed in a timely manner that all employees could post whatever they wanted. There was ample evidence that the pro-union contingent freely posted election-related materials on both of the Employee Bulletin Boards. (Tr. @ pp. 86-89). The Union never challenged the creation of the two new Bulletin Boards; in fact, the only complaint was to make sure that the anti-Union group did not unfairly dominate the space.

The Hearing Officer properly found that creation of the two Bulletin Boards did not favor one side or the other:

> "In the present case, by creating a neutral policy allowing unfettered access to employee bulletin boards, rather than "hindering communications" the Employer allowed employees, to share their views, whatever those views may have been."

The Hearing Officer further noted that there was no evidence presented that Union objected to or criticized or challenged the Employer's "creation, placement, or use" of the two Employee Bulletin Boards. Finally, the Union failed to "provide any evidence that the use of these bulletin boards put the Union to a disadvantage, or had any tendency to interfere with employee free choice."

The pro-Union proponents freely posted materials on the two Employee Bulletin Boards. They cannot claim after the fact that the Bulletin Boards tipped the election

scales in a way which was somehow objectionable. Both sides were able to air their views in a manner which avoided petty rule violations by employee campaigners.

IV. **Arguments**

The Board explained how alleged objectionable conduct should be examined in *Delta Brands, Inc*. 344 NLRB 252 (2005):

> "The objecting party must show, inter alia, that the conduct in question affected employees in the voting unit *Avante at Boca Raton* 323 NLRB 555 (1997) (overruling employer's objection where no evidence unit employees knew of alleged coercive incident) see *Antioch Rock & Ready Mix* 327 NLRB 1091 (1991), and had a reasonable tendency to affect the outcome of the election. Id."

The Board went on to say in *Delta Brands*, supra @ p. 253:

> "…[A]s with all elections, the Board looks to all of the facts and circumstances to determine whether the atmosphere was so tainted as to warrant the setting aside of an election."

The facts and circumstances which support the Regional Director upholding the Hearing Officer's Report should be divided into two parts, the first relating to speech objections and the second relating to the two Employee Bulletin Boards.

A. Speech Objections (Exceptions 1, 2, and 3)

In its Request for Review the Union repeatedly relies upon facts testified to by witnesses whose testimony was found to be unreliable. This is a major flaw in the Union's claim of the Regional Director allegedly "neglecting the facts." There is no good reason for the Regional Director to give credence to the testimony of witnesses found to be non-credible by the Hearing Officer. For the Union to suggest otherwise is seriously flawed thinking. The Union witnesses were unable to recall anything other than the basic single phrase or sentence claimed to be improper. When asked for details, they routinely did not recall the context of the remarks. They

struggled to explain what led up to the offending statement. They could not give details about what else was said. In contrast, the Hearing Officer found that the Employer's witness gave narratives with comprehensive details, always providing context for what was said, how it was said, when it was said, and why it was said, all of which the Hearing Officer found to be highly credible. (Hearing Officer's Report @ p. 4)

The NLRB has commented recently on factors pertinent to evaluating witness testimony in *Dayton Heidelburg Distributing Co* 364 NLRB No. 148 (2016):

"Credibility determinations may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the evidence, established or admitted facts, reasonable inferences that may be drawn from the record as a whole, and the inherent probabilities of the allegations. *Double D Construction Group,* 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003)." (emphasis supplied)

Perhaps the single most important credibility factor relative to the reliability of testimony is "context." It is recurringly mentioned in the Hearing Officer's Report. Conversely, "context" is not mentioned anywhere in the Union's Request for Review.

The Union cannot cherry pick through a witness's testimony and have selected portions morph into reliable fact where the Hearing Officer has specifically discounted what that witness said, especially after the Hearing Officer has provided significant and detailed support from the record for his credibility findings. Granted, as mentioned in *UniFirst Corporation*, *supra* it is uncustomary for the credibility findings of a Hearing Officer to be disturbed. The Union may have been reluctant to take on such a daunting challenge. But in order to prove that the facts the Hearing Officer relied upon based upon his credibility findings constituted a "clearly erroneous decision," the Union should be required to explain why such reliance was improper. There are no

such explanations in the Union's Request for Review, and for this reason the Union's "facts" set forth in support of its Request are bogus. They are not true, undone by the Union witnesses lacking any kind of meaningful credibility.

Not to belabor a point, but the Union in its Request for Review did not mention the word "credibility" once in its fifteen page Request for Review. This omission is no accident. The speech-related exceptions are baseless because the Union witnesses' testimony was not and should not have been given any credence by either the Hearing Officer or the Regional Director.

The bottom line is the Employer was especially sensitive to the issue of saying the wrong thing at the wrong time to workers which could impact the validity of the election. Illustratively, such sensitivity was demonstrated in the careful way Kraft reviewed certain "disclaimers" with the employees he met with in a second round of informational meetings later in April, 2016. Kraft asked all attendees to sign Participation Statements verifying that the disclaiming comments were, in fact, made by him. (See Union Exhibit #6, Tr. @ pp.47-48). While the Union tried to assert various objections about implied promises made by Kraft in their original Objections filing, none were meritorious, long ago either rejected or withdrawn.

B. The Employee Bulletin Boards (Exception #4)

Where an employer passes a rule restricting election-related materials from being posted on a bulletin board utilized generally for solicitations such that employees are prevented from communicating to each other about an election, the Board has held that this is objectionable conduct. See *The Bon Marche* 308 NLRB 184 (1992). This case is not applicable to our situation, in which the Employer established two Employee Bulletin Boards and approved access to the same by any worker wanting to post something about the election. There was no partisan aspect about

the creation, location, usage, or administration of who could post. The record is clear that the Bulletin Boards were fully accessed by both sides. In the absence of disparate enforcement, there is no way this hindered the ability of one side or the other to communicate during the ten days prior to the vote.

C. The Union's Delays Have Not Been In Good Faith

Since the Union first began asserting challenges to the April 28, 2016 election, the long march to certification has been unnecessarily delayed by the Union for months. All along the way, the Union's claims of wrongdoing have been puffed up, exaggerated, and designed to make this process last as long as possible.

In the General Counsel's August 31, 2016 rejection of the Union's Appeal from the Regional Director's dismissal of the parallel allegations in Case No. 06-CA-175641, the General Counsel stated:

> "Here, the probative evidence indicates that the Employer made it clear both in orally and in writing, that there were no promises, implied or otherwise, when they compared benefits and wages. Furthermore, the evidence indicates the employees were told they could get the same benefits even if they remained in the Union."

Upon receiving this final disposition of their concurrent unfair labor practice charge, the Union asserted a new matter in Case No. 06-CA-184421 on September 15, 2016 along with a Motion for Supplemental Objections. The Union asserted three new allegations the Union "unearthed" since "renewing" its investigation in late August, 2016 into potential election misconduct by the Employer in the April, 2016 election. This only produced more delay based

upon unreliable, spurious allegations. Two months later these new Union initiatives were both cast aside by the both the Regional Director and the General Counsel.

In the Union's Exceptions to the Hearing Officer's Report, as well as the Union's Request for Review, the Union's filings were at the 11th hour, using up all of the allotted time to assert its challenges.

We are now close to ten months post-election, with the Union asserting its final appeal. This process has been going on far too long.

These endeavors have been an expensive waste of time for the Employer. Worse, the employees have been short-changed in two ways: (1) by not having their choice about representation be verified in a timely manner; and (2) by having to continue to fund the Union's protracted delays with their dues money.

The Board has created stream-lined regulations for the holding of elections, with rigorous deadlines and aggressively asserted time frames for the parties to produce election-related documents and hold a vote. This same approach should be applied to post-election procedures. In applying the terms of §102.67(d), the Employer hopes the Board will end this long, unnecessary travail.

V. **Conclusions**

For all of the above reasons and arguments the Union's Request for Review should be denied by the Board.

Dated this 8th day of February, 2017 in Portland, Maine.

Respectfully submitted,

__/s/ Peter R. Kraft_____
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent via e-mail to all parties of record, the Hearing Officer, and the Regional Director.

___/s/ Peter R. Kraft_____
Peter Kraft, Esq.